

EXHIBIT 15

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

vs.

GOOGLE, INC.,

Defendant.

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) Case No.

) CV 10-03561 WHA

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VIDEOTAPED DEPOSITION OF

DONALD SMITH

November 20, 2015

Job No. CS2187585

REPORTED BY:

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<p style="text-align: right;">Page 234</p> <p>1 A. So Apache Harmony -- so they are a source code 2 licensee. They have the right to create an independent 3 implementation subject to the terms and conditions of 4 their agreement in the TCK. Whether they used the 5 Apache Harmony codes specifically, I wouldn't know. 6 Q. Did you do anything to investigate that as 7 part of your deposition today? 8 A. No, I did not, and I'm trying to imagine IBM 9 telling me the answer to that question, and I don't 10 think they would. 11 Q. Has Oracle ever used any code from the Apache 12 Harmony Project? 13 MS. LEWIS-GRUSS: Objection to the form. 14 THE WITNESS: So from my knowledge as an 15 Oracle employee, I'm not aware of anything current or 16 even going back to when I started, but it was from when 17 I was at the Eclipse Foundation and from my independent 18 point of view, I know that Oracle was always listed as 19 being an interested party, at least. 20 BY MR. MULLEN: 21 Q. But you don't know whether Oracle ever used 22 any code from the Apache Harmony Project? 23 MS. LEWIS-GRUSS: Objection to the form. 24 THE WITNESS: I don't know if Oracle used any 25 code. So if Oracle did use code subject to the terms of</p>	<p style="text-align: right;">Page 236</p> <p>1 ISVs to compete against the Microsoft ecosystem. But 2 Sun, as the steward, needed a way to monetize the 3 ongoing development and support of that platform, and so 4 the business model was that there would be a field of 5 use, and that if you were to run Java in a dedicated 6 purpose or -- well, in a non-general purpose case, that 7 would be royalty bearing. You would pay those 8 royalties, and that would help fund the Java platform. 9 And so the entire ecosystem, the entire source code 10 model with -- going back to the very early days with all 11 of those companies was predicated on that. And so, you 12 know, Apache wanted the ability to have that -- they 13 basically wanted that particular restriction lifted, and 14 so that would have been unfair to all the other 15 licensees, and moreover, it would have jeopardized the 16 ongoing funding for the development of the Java 17 platform. And so they ultimately -- they tried to find 18 some common ground, but just were never able to. 19 Q. And is it your understanding that Apache 20 would have needed a TCK license from Oracle to do an 21 independent implementation of the Java APIs? 22 A. Yes, and that's what the dispute was about. 23 It was about the terms of that TCK license. 24 Q. And without that TCK license, was it Oracle's 25 view that Apache was infringing Oracle's copyrights?</p>
<p style="text-align: right;">Page 235</p> <p>1 the Apache license, as the steward and as a Java -- as 2 the owner of all the IP around Java, it would have been 3 its right, but I'm not aware of it having done so. 4 BY MR. MULLEN: 5 Q. So can you tell me anything further about 6 your understanding of the reason for the dispute 7 between Apache and Oracle? 8 A. Yeah. So the reason for the dispute is that 9 Apache wanted a TCK that did not have a field of use 10 restriction, and -- 11 Q. Sorry, go ahead. 12 A. Sorry. I stuttered there, but that's the 13 simplest summary of the dispute. 14 Q. And why was Oracle unwilling to give Apache a 15 TCK without a field of use restriction? 16 A. Well, I think it was Sun that was unwilling 17 than Oracle. Because the field of use restriction is 18 where the commercial side of the Java business is 19 monetized. 20 So if you go back to the very beginning of the 21 entire Java business model, back to the '90s at the very 22 beginning, the model that was set up is that use by 23 ISVs, so companies like Sun and IBM and Oracle and HP 24 and others, that use on general purpose desktop and 25 servers would be gratis. And so it would allow those</p>	<p style="text-align: right;">Page 237</p> <p>1 MS. LEWIS-GRUSS: Objection to the form. 2 THE WITNESS: This goes back to the Sun era, 3 right, and so -- 4 BY MR. MULLEN: 5 Q. I'm just asking for information from you from 6 the recent time period. 7 A. I understand, but it was well-known that there 8 was a dispute there, and that it was well-known -- as a 9 third party, and it's my position and testimony here as 10 Oracle -- that that was infringing, and it was 11 well-known that it was. 12 Q. Are you familiar with the GNU Classpath 13 Project? 14 A. I am, yes. 15 Q. How are you familiar with that? 16 A. Again, as part of the preparation for this 17 case. 18 Q. And who did you talk to about GNU Classpath? 19 A. So we covered this at the very, very, very 20 beginning of the morning. So this was as it relates to 21 my conversation with Mark Wayne, who was a Sun employee 22 at the time that that was going on. He conveyed the 23 facts of that to me such that I could provide the 24 testimony today. 25 Q. And what did Mr. Wayne convey to you</p>

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<p style="text-align: right;">Page 238</p> <p>1 specifically?</p> <p>2 A. So he conveyed to me the fact that Sun was</p> <p>3 aware of the GNU Classpath Project, had been monitoring</p> <p>4 it closely, had been -- saw it largely as an academic</p> <p>5 research-type effort; that it had people in contact with</p> <p>6 those that were working on it doing the development;</p> <p>7 that Sun at that time was considering open sourcing Java</p> <p>8 itself and was looking at that as a way to kind of</p> <p>9 manage that in a diplomatic way, or in a simple way, I</p> <p>10 guess to put it; and that there was only one case that</p> <p>11 that they were ever aware of where that code was used</p> <p>12 commercially and not just as a research project; and</p> <p>13 that was the case that we talked about very early this</p> <p>14 morning, which was a -- I don't know if it's a standards</p> <p>15 body or specification body in South Korea called WIPI,</p> <p>16 W-I-P-I. And as Sun became aware of that, they</p> <p>17 immediately engaged; and, as I understand it, there was</p> <p>18 even government involvement between the United States</p> <p>19 and South Korea. And so one interesting -- so one thing</p> <p>20 about that conversation was that South Korea was using</p> <p>21 GNU Classpath as "oh, we just got the code from there,"</p> <p>22 but there was actually additional code outside of the</p> <p>23 Java SE specification -- sorry, I forget exactly which,</p> <p>24 I think it was MIPS-related code. So it was unclear</p> <p>25 whether that was just an excuse for doing what they had</p>	<p style="text-align: right;">Page 240</p> <p>1 MS. LEWIS-GRUSS: I disagree with that. I</p> <p>2 think that Topic 2 is more narrow than your question;</p> <p>3 and I also object to the form.</p> <p>4 THE WITNESS: So I have two parts to the</p> <p>5 answer there. So number one is I'm not aware of any</p> <p>6 Oracle product that is using GNU Classpath; and to the</p> <p>7 degree that a product existed as of 2006, it would be</p> <p>8 irrelevant because all that same source code is</p> <p>9 available under the GPL and more.</p> <p>10 BY MR. MULLEN:</p> <p>11 Q. Are you aware whether GNU Classpath still</p> <p>12 exists?</p> <p>13 A. I am not aware if it still exists. I would</p> <p>14 not be surprised if it was available somewhere, but</p> <p>15 again, as of 2006, by having OpenJDK available under the</p> <p>16 same license, it wouldn't matter. It would -- the GPL</p> <p>17 permits somebody to come to OpenJDK today and take some</p> <p>18 or all of the source code and put it somewhere else</p> <p>19 under the GPL, so it would be no different than that.</p> <p>20 Q. Does the GPL Version 2 license prohibit --</p> <p>21 let me say it this way. Does the GPL license allow</p> <p>22 commercial use?</p> <p>23 A. So you -- you can use -- subject to the terms</p> <p>24 and conditions of the GPL, you can create commercial</p> <p>25 products, yes.</p>
<p style="text-align: right;">Page 239</p> <p>1 done or not, but what I do know is that it was resolved</p> <p>2 commercially. A company called ETRI commercially</p> <p>3 licensed that code, and so that, you know, helped fund</p> <p>4 Sun's ongoing Java development that way. And that,</p> <p>5 ultimately, Sun open sourced Java under a GPL license,</p> <p>6 and so that completely obviated anything around GNU</p> <p>7 Classpath, and it was just left. All the people that</p> <p>8 were involved in that particular research project just</p> <p>9 started working in OpenJDK.</p> <p>10 Q. Are you aware of Oracle ever using GNU</p> <p>11 Classpath code in any of its products?</p> <p>12 MS. LEWIS-GRUSS: Object to form; and to the</p> <p>13 extent -- and this is outside the scope of the 30(b)(6)</p> <p>14 topics.</p> <p>15 THE WITNESS: So I'm not aware. And again,</p> <p>16 after 2006, all that source code was available in</p> <p>17 OpenJDK, and so there would have been no need for Oracle</p> <p>18 to ever use that in its product.</p> <p>19 BY MR. MULLEN:</p> <p>20 Q. So it's your testimony that there's no</p> <p>21 product at Oracle that uses code from GNU Classpath?</p> <p>22 MS. LEWIS-GRUSS: Again, this is outside the</p> <p>23 scope of the 30(b)(6).</p> <p>24 MR. MULLEN: I think this is directly within</p> <p>25 the scope of Topic 2.</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Are you familiar with Oracle Linux?</p> <p>2 A. I am familiar with Oracle Linux, at least at a</p> <p>3 high level.</p> <p>4 Q. Is that a commercial product?</p> <p>5 A. So that is a bit of a metaquestion. I would</p> <p>6 want to have an Oracle Linux product manager answer</p> <p>7 that.</p> <p>8 Q. Why do you say that's a bit of a</p> <p>9 metaquestion?</p> <p>10 A. So the reason I say that is we -- what I do</p> <p>11 know for a fact is we sell a subscription. We have a</p> <p>12 service called, it's ULN, but I'm not sure what that</p> <p>13 stands for. I apologize. This is not my product set.</p> <p>14 I think it's the unbreakable Linux network. The "U" may</p> <p>15 stand for something else. And so that, like, that is a</p> <p>16 product. So we sell that service; that's subscription</p> <p>17 service. Whether -- when you talk about Oracle Linux as</p> <p>18 a product, it depends on what you mean by product. So I</p> <p>19 believe it's available on its own, but I'm not sure it's</p> <p>20 sold directly. It's the service with the updates and</p> <p>21 the patching and the access to the applications, and so</p> <p>22 on and so forth, that is of value.</p> <p>23 Q. So is it fair to say that Oracle Linux is, at</p> <p>24 least, a commercial product, or service, or some</p> <p>25 combination of the two?</p>

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